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Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20024

233708

Re: **STB Finance Docket No. 35239-Allegheny Valley Railroad**
Petition for Declaratory Order-The Buncher Company, Respondent

Dear Ms. Brown:

We represent The Buncher Company ("Buncher"), the Respondent in the above-referenced matter before the Surface Transportation Board ("STB"). We are writing to follow up on our prior correspondence of September 4, 2012 (copy attached) and to again address the status of this matter.

The above-referenced matter is pending decision by the STB. The proceeding was commenced by Allegheny Valley Railroad ("AVRR") in April 2009, almost four years ago. At issue is the status or abandonment of an easement for a short dead-end section of a single rail line across property owned by Buncher near downtown Pittsburgh. The property across which AVRR asserts an easement but which Buncher contends was abandoned years ago is a tiny but meaningful part of a major redevelopment project that will improve now vacant parking lots into major public spaces and residential, retail, office and riverfront-uses. When this redevelopment project began several years ago, there were a number of items and approvals that needed to be resolved including private and public funding, plan coordination with The Redevelopment Authority of Pittsburgh and zoning and land use approvals from the City of Pittsburgh. These required enormous direct work and have been continuously addressed entirely apart from the ancillary matter raised by AVRR in the proceeding pending before the STB. In point of fact, however, in the nearly four years that the proceeding before the STB has been pending all of these planning and governmental approval tasks required for the redevelopment project to move forward have been decided or resolved. As the most recent example, enclosed herewith is a copy of a newspaper article discussing the recent approval by City of Pittsburgh for the Special Zoning District required for the redevelopment project on the applicable Buncher property. In

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contrast to the progress on, and resolution of, these other matters, the matter before the STB is still awaiting decision

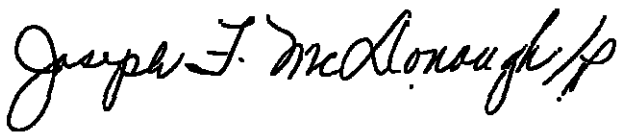
To summarize the status of the STB proceeding (as set forth in our letter of September 4), an initial ruling by the STB was issued in 2010 and thereafter appealed to the United States Court of Appeals for the District of Columbia. While on appeal, the STB requested (and AVRR and Buncher consented) that the Court of Appeals remand the matter to the STB so that it could render a further decision based on its review of a few additional but significant documentary exhibits. The matter was remanded in January 2011 (two years ago) and the parties' final submissions on remand to the STB were completed in May 2011 (19 months ago). The matter has been pending decision since then.

We know from experience and observation that the STB typically decides far more complicated and extensive matters than this one in substantially less time. Given the long time that the matter has been pending before the STB and the fact that the redevelopment project has received its other approvals, Buncher respectfully requests that a decision of the matters pending before the STB be made as soon as possible.

Your attention to this matter is greatly appreciated.

Very truly yours,

BUCHANAN INGERSOLL & ROONEY PC

By: 

Joseph F. McDonough

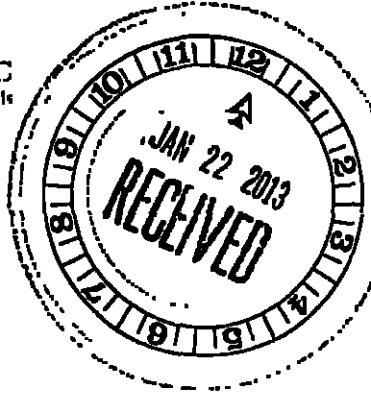
JFM/sam
Enclosures

cc Richard R. Wilson, Esquire

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September 4, 2012

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

**Re: STB Finance Docket No. 35239-Allegheny Valley Railroad Company
Petition for Declaratory Order-The Buncher Company, Respondent**

Dear Ms. Brown.

We represent The Buncher Company ("Buncher") in connection with the above-referenced matter which is pending decision by the Surface Transportation Board ("STB"). We are writing to address the status of this matter and correct a possible misapprehension the Board may have about discussions between the parties.

The status of the matter is that it was commenced by Allegheny Valley Railroad ("AVRR") more than 3 years ago, in April 2009. The proceeding involves the status or abandonment of an easement for a short section of a single rail line. After final submissions by both parties, the ruling of the STB was issued in 2010 and, thereafter, appealed to the United States Court of Appeals for the District of Columbia Circuit. At the request of the STB, and with the consent of AVRR and Buncher, the Court of Appeals remanded the matter in January 2011 for the STB to render a further decision based on its review of a limited number of additional documentary exhibits. The parties' submissions to the STB on remand were completed by May 2011 -- 15 months ago -- and the matter has been pending decision since then.

For several years, Buncher has been working with the City of Pittsburgh, its planning agencies and other governmental bodies to redevelop a portion of an area known as the Strip District of Pittsburgh, an infinitesimal part of which includes the area where AVRR asserts a railroad easement. In a number of instances, when Buncher has requested review or approval of a development-related matter from an agency or governmental body, AVRR has publicized its dispute with Buncher in a manner calculated to delay or defer approvals required for various parts of the redevelopment project. As one example, attached is a copy of a letter dated June 28,

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Cynthia T. Brown, Chief
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2012 sent by AVRR's counsel bringing the pending STB matter to the attention of the City of Pittsburgh Department of Planning and requesting that they defer any action until the STB has rendered its final determination. As another example, Buncher's request to the Federal Highway Administration for permission to allow a portion of a road in its development to pass under a highway bridge has been delayed. Indeed, the STB itself has been kept apprised of AVRR's public relations battle through regular, unsolicited correspondence that AVRR has sent to the STB. [See, for example, AVRR's recent letters to the STB dated June 28 and July 17, 2012].

Buncher, of course, believes that it is correct in the position it has taken before the STB and is prepared for a decision by the Board. Our reason for writing is out of a concern that the STB may have been left with the impression by AVRR that settlement discussions are occurring and/or that there may be reason to defer a decision. Buncher wants the STB to know that it has neither invited nor received any contact at all from AVRR with regard to settlement, no discussions regarding settlement are taking place and Buncher has no reason to engage in any settlement discussions. Our interest is in making sure that the STB does not refrain from deciding this matter, which has been fully briefed for 15 months, based on what would be an incorrect perception of the situation and circumstances.

Your attention to this matter is greatly appreciated.

Very truly yours,

BUCHANAN INGERSOLL & ROONEY PC

By


Joseph F. McDonough

JFM/sam

cc Richard R. Wilson, Esquire

RICHARD R. WILSON, P.C.

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June 28, 2012

**Ms. Cynthia T. Brown, Chief
Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, SW
Washington, DC 20024**

**Re STB Finance Docket No. 35239 – Allegheny Valley Railroad Company –
Petition for Declaratory Order**

Dear Ms. Brown:

The purpose of this letter is to bring to your attention a Notice received by Allegheny Valley Railroad Company ("AVR") on May 22, 2012 regarding a Petition by the Buncher Company seeking a change in the zoning classification between 16th and 21st Street in the Pittsburgh Strip District which is the subject of litigation in the above captioned proceeding. In addition, Buncher has also sought approval for a Preliminary Land Development Plan for the construction of a mixed use development within the zone change area. Attached to this letter is a copy of the May 22, 2012 Notice received by AVR from the City of Pittsburgh Department of City Planning.

On June 26, 2012, AVR formally advised the City of Pittsburgh Department of City Planning of the pending litigation before the Board in Finance Docket No. 35239. (Copy attached). Notwithstanding the fact that the City of Pittsburgh had been included as a party of record in that Finance Docket, both the Buncher Company and the City of Pittsburgh seem intent on ignoring the Board's pending proceeding in this docket.

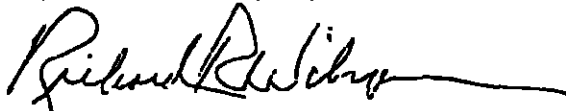
Should the actions of the Buncher Company or the City of Pittsburgh result in any restriction or interference with AVR's rights to use its permanent rail easement between 16th and 21st for railroad purposes, it may be necessary to seek further relief from the Board with respect to these activities.

Ms. Cynthia T. Brown, Chief
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Thank you for your attention to this matter

Very truly yours

RICHARD R. WILSON, P.C.

A handwritten signature in black ink, appearing to read "Richard R. Wilson", with a long horizontal flourish extending to the right.

Richard R. Wilson, Esq
Attorney for Allegheny Valley Railroad Company

RRW/hah

cc Allegheny Valley Railroad Company
Edward Fishman, Esq

post-gazette.com
Pittsburgh Post-Gazette

Strip District project gets council approval

December 18, 2012 12:09 am

By Joe Smydo / Pittsburgh Post-Gazette

Buncher Co. won final approval of special zoning legislation for its Strip District project Monday despite one council member's description of the decision as a "big mistake."

Council voted 5-4 for creation of a special zoning district for Riverfront Landing, a development proposed for 55 acres from the Veterans Bridge to 21st Street between Smallman Street and the Allegheny River

The zoning district is just one step in the process to begin the project, which still has several hurdles to clear before construction could begin

Councilman Patrick Dowd has raised numerous concerns about the project, including the possibility of gated streets in a residential part of the development and what he described as an inadequate buffer between proposed buildings and the riverfront.

He has also raised concerns about Buncher's proposed purchase of the historic produce terminal, now owned by the city's Urban Redevelopment Authority. Buncher wants to demolish one-third of the building to extend 17th Street to the river, and Mr. Dowd said Monday that the developer would use at least part of the building as a "crappy strip mall."

Mr. Dowd made an impassioned argument against the zoning legislation last week, but his colleagues gave preliminary approval to the legislation. Despite Mr. Dowd's repeated objections, council approved the bill Monday in a 5-4 vote.

Voting for the zoning district were council President Darlene Harris and council members Ricky Burgess, Theresa Kail-Smith, R. Daniel Lavelle and Corey O'Connor. Voting no were Mr. Dowd, Bruce Kraus, Bill Peduto and Natalia Rudiak.

The legislation calls for buffers of 70 or 75 feet between the riverfront and Buncher buildings, while Mr. Dowd and the nonprofit group Riverlife had demanded 95 feet.

Riverlife said the extra footage was needed to widen a riverfront trail and create other public amenities.

In addition, Mr. Dowd said gated communities fly in the face of the city's Allegheny Riverfront Vision Plan and the Allegheny Riverfront Green Boulevard Plan, which stress the importance of public access to the water.

First Published December 18, 2012 12:00 am